

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 SOREN RICHARD OLSEN, III,

10 Petitioner,

11 v.

12 JEFFREY PERKINS,

13 Respondent.

14 Case No. 25-638-KKE-MLP

15 MINUTE ORDER

16 The following Minute Order is made at the direction of the Court, the Hon. Michelle L.
17 Peterson, United States Magistrate Judge:

18 This is a federal habeas action filed under 28 U.S.C. § 2254. This matter comes before
19 the Court on Petitioner's Motion to Request a Certificate of Appealability (dkt. # 2), Motion to
20 Request Assigned Counsel (dkt. # 3), and Motion to Amend Information (dkt. # 5).

21 A petitioner seeking post-conviction relief under § 2254 may request a certificate of
22 appealability after a district court dismisses the habeas petition. *See Miller-El v. Cockrell*, 537
23 U.S. 322, 327 (2003). Since the Court has not dismissed the underlying action, Petitioner's
Motion to Request a Certificate of Appealability (dkt. # 2) is STRICKEN as premature.

1 Petitioner's request for leave to file a first amended petition is similarly moot, Petitioner
2 need not apply for permission to file a first amended petition, he may do so as a matter of right.
3 Federal Rule of Civil Procedure 15(a) permits a civil litigant to "amend the party's pleading once
4 as a matter of course at any time before a responsive pleading is served," and Rule 15 applies to
5 habeas petitions "with the same force that it applies to all garden-variety civil cases." *Calderon*
6 *v. United States Dist. Ct.*, 134 F.3d 981, 986 n. 6 (9th Cir. 1998); *see also Keating v. Hood*, 191
7 F.3d 1053, 1067 (9th Cir. 1998) (applying Rule 15(a) to § 2254 habeas petitions). As Respondent
8 has yet to file a responsive pleading, i.e., an answer, Petitioner may file an amended pleading as
9 a matter of right, and does not need the Court's permission to do so. Accordingly, Petitioner's
10 Motion to Amend Information (dkt. # 5) is STRICKEN as moot.

11 Finally, there is no right to appointed counsel in cases under 28 U.S.C. § 2254 unless an
12 evidentiary hearing is required or counsel is necessary for effective discovery. *See Terravona v.*
13 *Kincheloe*, 852 F.2d 424, 429 (9th Cir. 1988); *Brown v. Vasquez*, 952 F.2d 1164, 1168 (9th Cir.
14 1992); Rules Governing § 2254 Cases in the U.S. District Courts 6(a) and 8(c). The Court may
15 request counsel for indigent litigants under 28 U.S.C. § 1915(e)(1), but only under "exceptional
16 circumstances." *Agyeman v. Corrections Corp. of Am.*, 390 F.3d 1101, 1103 (9th Cir. 2004).
17 Here, the record is not sufficiently developed to determine whether an evidentiary hearing or
18 discovery will be necessary, and Petitioner has not demonstrated that exceptional circumstances
19 exist. Moreover, Petitioner has not shown that his case is particularly complex or that
20 appointment of counsel would serve the interests of justice. Therefore, the Court DENIES
21 Petitioner's Motion for Appointment of Counsel (dkt. # 3).

22 The Clerk is directed to send copies of this order to the parties and to the honorable
23 Kymberly K. Evanson.

Dated this 7th day of May, 2025.

Ravi Subramanian

Clerk of Court

By: Tim Farrell

Deputy Clerk

MINUTE ORDER - 3